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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 286

THE UNITED STATES OF AMERICA,
Appellant,

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

HENRY SILVERMAN,
SAMUEL L. EINHORN,
Counsel for Appellees.

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Statute Cited.

Criminal Appeals Act of March 2, 1907, Chapter 2564, 34 Stat. 1246, U. S. Code. Title 18, Section 682	1, 2

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 7380

DECEMBER SESSIONS, 1936.

UNITED STATES OF AMERICA,

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN.

STATEMENT OF APPELLEE AGAINST JURISDICTION.

(Filed August 3rd, 1938.)

Pursuant to Rule 12, Paragraph 3, of the Supreme Court of the United States, Midstate Horticultural Company, Inc., and Arpaxat Setrakian submit herewith their statement showing the matters or grounds making against the jurisdiction of the Supreme Court asserted by the United States, appellant in this cause:

1. The statutory provision relied upon by appellant to sustain the jurisdiction of the Supreme Court in this cause is the Criminal Appeals Act of March 2, 1907, Chapter 2564,

34 Stat. 1246, Title 18, Section 682 of the United States Code Annotated, which provides in part as follows:

> "The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases."

The decision in this cause was rendered by the District Court in an opinion filed June 16, 1938, in which opinion the demurrer to the indictment was sustained, as follows:

> "The Court is of the opinion that under all of the facts, jurisdiction is not in this Court, and, so holding, the demurrers are sustained."

2. On June 22, 1938, there was filed the order of the District Court dated June 22, 1938, sustaining the demurrer and discharging the defendant.

3. In its petition for appeal appellant prays for leave to appeal to the Supreme Court of the United States for a reversal of the judgment and order made on June 22, 1938.

4. The appeal in this cause was taken on July 20, 1938 and it appears therefore from the record sought to be reviewed that the appeal was not taken within thirty days after the decision had been rendered by the District Court on June 16, 1938. The mere entry of the order of June 22, 1938, by the District Court sustaining the demurrer, does not extend the time within which the appeal must be taken.

5. The decision of the District Court of June 16, 1938, sustaining the demurrer, is not based on the invalidity or construction of the statute upon which the indictment is founded, as required by the Criminal Appeals Act of March 2, 1907, Chapter 2564, 34 Stat. 1246, Title 18, Section 682 of the United States Code Annotated.

In compliance with Rule 12, Paragraph 3, and Rule 7, paragraph 4 of the Supreme Court of the United States the

appellee includes in this opposing statement the following motion to affirm, which is united in the alternative with the following motion to dismiss:

MOTION TO DISMISS.

The appellee moves the Court to dismiss the appeal filed herein for the following reason:

1. The appeal was not taken within thirty days after the decision had been rendered by the District Court as provided in the Criminal Appeals Act of March 2, 1907, Chapter 2564, 34 Stat. 1246, Title 18, Section 682 of the United States Code Annotated.

MOTION TO AFFIRM.

In the event that the aforesaid motion to dismiss is not granted, the appellee moves the Court to affirm the decision of the District Court sustaining the demurrer to the indictment for the following reason:

1. The decision of the District Court of June 16, 1938, sustaining the demurrer to the indictment, is in accordance with the decisions of the Supreme Court.

Respectfully submitted,

EINHORN & SCHACHTEL,
HENRY SILVERMAN,
(Sgd.) By SAMUEL L. EINHORN,
Attorneys for Midstate Horticultural Company, Inc., and Arpaxat Setrakian, Appellee.

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